

Docket No. ORT1436US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Smith-Swintosky, et al.

Serial No. : 09/863,600

Art Unit: 1653

Filed : May 23, 2001

Examiner: A. Mohamed

For : **NEROPROTECTIVE PEPTIDES**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

May 31, 2006  
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Yunling Ren  
(Name of applicant, assignee, or Registered Representative)

/Yunling Ren/  
(Signature)

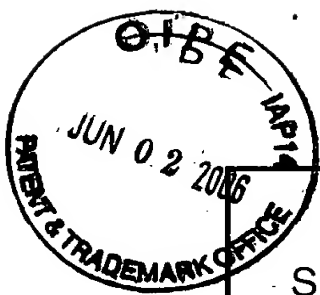
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**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Pursuant to 37 C.F.R. §§ 1.56, 1.97 and 1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.T. 1.56(b).

In accordance with § 1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified application, within three-months of the date of a first Office Action on the merits of the above-identified application, or before the



SUBMISSION UNDER MPEP 609 D

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Application Number	09/863,600
Filing Date	May 23, 2001
First Named Inventor	Smith-Swintosky,
Group Art Unit	1653
Examiner Name	A.Mohamed
Attorney Docket Number	ORT1436US

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Name of Patentee or Applicant of Cited Document	U.S. Patent Document		Pages, Columns, Lines, where relevant passages or relevant figures appear
			Number	Kind Code <sup>2</sup> (if known)	
		Affymax, Inc.	US2005/0137329	A1	

FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Name of Patentee or Applicant of Cited Document	Foreign Patent Document			Pages, Columns, Lines, where relevant passages or relevant figures appear	T <sup>6</sup>
			Office <sup>3</sup>	Number <sup>4</sup>	Kind Code <sup>5</sup>		

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner 's Initials*	Cite No. <sup>1</sup>	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T <sup>2</sup>
		Complaint: Affymax, Inc. vs. Ortho Pharmaceutical Corporation and Ortho-McNeil Pharmaceutical, Inc. Munich Regional Court I, Civil Division 7, Lehnbackplatz 7	
		Complaint: Affymax, Inc. vs. Johnson & Johnson, Ortho-McNeil Pharmaceutical, Inc.; Ortho Pharmaceutical Corporation; the R.W. Johnson Pharmaceutical Research Institute d/b/a Johnson & Johnson Pharmaceutical & Development, L.L.C., and DOES 1-10: United States District Court for the Northern District of Illinois, Eastern Division; Docket No. 04C 6216	
		Amended Complaint: United States District Court for the Northern District of Illinois, Eastern Division, Case No. 04 C 6216	

Examiner  
Signature

Date  
Considered

mailing date of a first Office Action after the filing of request for continued examination under § 1.114, no additional fee is required.

Applicants direct the Examiner's attention to the litigation between an assignee of the present application, Ortho-McNeil Pharmaceutical, Inc., and Affymax, Inc., case no. 04CV6216 in the United States District Court for the Northern District of Illinois, Eastern Division. This litigation is currently pending.

In the Complaint as originally filed on September 23, 2004, Affymax alleges incorrect inventorship and ownership over the claims in a number of patents and patent applications including the present application Serial Number 09/863,600 ('600 application). However, in its Amended Complaint filed on October 12, 2005, Affymax has dropped all of the allegations of incorrect inventorship and ownership with respect to any claim in the '600 application. As presently understood by applicants, the inventorship of the '600 application is no longer in dispute. It is applicants' good faith belief that Affymax did not contribute to the inventions claimed in the '600 application or any related domestic or foreign patents or applications.

In its Amended Complaint, Affymax only alleges incorrect inventorship and ownership over applicants' U.S. Pat. No. 5,767,078 ('078 patent) and patents or applications related

thereto. It should be noted that the present application ('600 application") is not related to the '078 patent.

Affymax has also filed a Complaint in Germany (Affymax, Inc. v. Ortho Pharm. Corp., No. 21 O 10914/04, Munich Reg. Ct. I, June 9, 2004), alleging incorrect inventorship and ownership over a patent application having Publication Number EP 0892812, which is a counterpart to the '078 patent. The German Complaint does not include any allegation of incorrect inventorship over any counterpart of the '600 application.

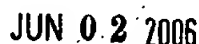
Copies of all reference cited on the attached Form PTO 1449 and MPEP 609D are enclosed herewith.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/ORT1436US/YR. This form is submitted in triplicate.

Respectfully submitted,

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DATED: May 31, 2006



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Substitute for form 1449A/PTO

(use as many sheets as necessary)

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<i>Application Number</i>	09/863,600
<i>Filing Date</i>	May 23,2001
<i>First Named Inventor</i>	Smith-Swintosky
<i>Group Art Unit</i>	9298
<i>Examiner Name</i>	A. Mohamed
<i>Attorney Docket Number</i>	ORT 1436 US

## U.S. PATENT DOCUMENTS

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**FOREIGN PATENT DOCUMENTS**

[illegible]

Examiner Signature	Date Considered
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Unique citation designation number. 2 See attached Kinds of U.S. Patent Documents. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

**Burden Hour Statement:** This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U. S. Patent and Trademark Office, Washington, DC 20231. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS, SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450**